

REMARKS

This Response and the enclosed Request for Continued Examination is submitted in reply to the Office Action dated December 27, 2007. Claims 11-20 are pending in the present application. Claims 11 and 18-20 have been amended. Claims 11, 19, and 20 are in independent form. No new matter was introduced as a result of the amendments. Please charge deposit account 02-1818 for all fees due in connection with this Response.

Claims 11, 18, and 19 were objected to for informalities, particularly for including acronyms without the appropriate spelled out meanings. In light of the present amendments, Applicant submits the objectionable matter has been addressed. Withdrawal of the objection is earnestly requested.

Claims 11, 14 and 16-20 were rejected under 35 U.S.C. §102(e) as being anticipated by Beckman et al (US Pub. 2004/0209638). Claims 12-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Beckman et al (US Pub. 2004/0209638) in view of Speight (US Pub. 2003/0069020). Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over Beckman et al (US Pub. 2004/0209638) in view of Anderson (US Pub. 2004/0043783). Applicant respectfully traverses these rejections, as Beckmann is not prior art to the present application.

MPEP 2136.03 provides in part:

35 U.S.C. 102(e) is explicitly limited to certain references "filed in the United States before the invention thereof by the applicant" (emphasis added). Foreign applications' filing dates that are claimed (via 35 U.S.C. 119(a) - (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes. This includes international filing dates claimed as foreign priority dates under 35 U.S.C. 365(a). Therefore, the foreign priority date of the reference under 35 U.S.C. 119(a)-(d) (f), and 365(a) cannot be used to antedate the application filing date.

Furthermore,

[T]he international filing date [of a PCT application] is a U.S. filing date for prior art purposes under 35 U.S.C. 102(e). If such an international application properly claims benefit to an earlier-filed U.S. or international application, or priority to an earlier-filed U.S. provisional application, apply the reference under 35 U.S.C.

102(e) as of the earlier filing date, assuming all the conditions of 35 U.S.C. 102(e) and 35 U.S.C. 119(e), 120, or 365(c) are met.

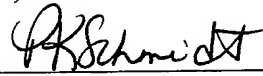
In the present case, the cited Beckmann reference has a PCT filing date of July 9, 2002. The present application claims priority to DE 10229056.3, which was filed on June 28, 2002. In the Office Action dated December 27, 2007, the Examiner explained that the priority to DE 10229056.3 has not been perfected because a verified English translation of the document was not on file. Accordingly, in order to perfect the priority claim, a verified English translation of DE 10229056.3 is enclosed with this Response. Therefore, the present application predates Beckmann's PCT date, and Beckmann's German filing (DE 10154428) may not be considered for prior art purposes under 102(e). Thus, all the pending rejections are improper and should be withdrawn.

For all the reasons provided above, Applicant submits that all of the claims are novel, non-obvious, and patentably distinguished over the art of record and in condition for allowance. An earnest endeavor has been made to place this application in condition for formal allowance, and in the absence of more pertinent art such action is courteously solicited. If the Examiner has any questions regarding this Response, applicant respectfully requests that the Examiner contact the undersigned.

The Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing.

Respectfully submitted,

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Dated: March 26, 2008